

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 94-0826 CSET  
Controlled Substance Excise Tax  
For The Period October 6, 1994**

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**ISSUE**

**I. Controlled Substance Excise Tax: Imposition**

**Authority:** IC § 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax. An attorney who claimed to be representing the taxpayer, but who never submitted a Power of Attorney (IDR Form POA-1) to the Department, wrote the taxpayer's initial protest letter. In that letter the attorney attacked the protest on federal constitutional double jeopardy grounds, citing *Department of Revenue of Mont. v. Kurth Ranch*, 511 U.S. 767, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994). However, neither that letter nor anything else in the taxpayer's file sets out any evidence or facts whatever substantiating that he has previously been in jeopardy with respect to the controlled substances on which the Department assessed tax. In addition, the attorney has since written the Department advising that she has left the private practice of law.

**STATEMENT OF FACTS**

The Indiana Department of State Revenue (hereafter "I.D.S.R." or "the Department"), Legal Division scheduled an in-person protest hearing on December 14, 1998 at 9:30 a.m. EST for the tax type/s and period/s shown above. The Department gave the taxpayer written notice of the date, time and place of the hearing by certified and first class mail at his last known address. The taxpayer refused to sign for the certified notice, and the U.S. Postal Service returned both the certified and first class notices, the latter stamped as being undeliverable. IC ch. 6-8.1-7, the confidentiality chapter of Indiana's Tax Administration Act, by necessary implication prohibits the Department from resorting to notice by publication with respect to any listed tax, including the one that the Department has assessed against the taxpayer.

The taxpayer wholly failed to appear at the scheduled date, time and place, either in person or by duly appointed representative. The taxpayer also failed to submit any documentary evidence, or any legal authority beyond that cited in the original protest letter. Since the taxpayer failed to appear at the protest hearing, the Department will take the facts that IC § 6-7-3-5 specifies as necessary to support an assessment of Controlled Substance Excise Tax, together with the amount of the assessment, as being true and established.

### **DISCUSSION**

IC § 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of controlled substances in Indiana. The notice of proposed assessment is prima facie evidence that the Department's claim for the unpaid tax is valid; the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. IC §§ 6-8.1-5-1(a) (1988) and 6-8.1-5-1(b) (1993). The taxpayer has submitted no evidence whatever, and no legal authority beyond that in the initial protest letter, pursuant to this statutory duty to rebut the prima facie validity of the assessment. The taxpayer's failure to appear also acts as a waiver of protest rights by virtue of IC §§ 6-8.1-5-1(c)(2) and 6-8.1-5-1(i)(2) (1993), which require the Department to demand payment under such circumstances.

### **FINDING**

The taxpayer did not initially authorize any representative to protest on his behalf, and in any case has since waived his double jeopardy argument. Accordingly, the taxpayer's protest is denied.